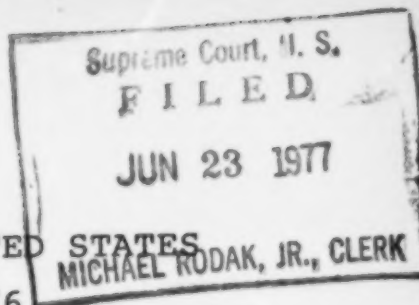


IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1976
No. 76-1828



H. D. GROSS dba VALLEY
ROCK AND SAND CORPORATION,

Appellant,

vs.

PEOPLE OF THE STATE OF
CALIFORNIA,

Appellee.

On Appeal From the Supreme Court
of the State of California

JURISDICTIONAL STATEMENT

PETER AMSCHER

120 South Harvard Street
Hemet, CA 92343
(714) 658-9458

Counsel for Appellant

IN THE
SUPREME COURT OF THE UNITED STATES

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SUBJECT INDEX

	<u>Page</u>
TABLE OF AUTHORITIES	ii
JURISDICTION	1
QUESTIONS PRESENTED	4
STATEMENT OF CASE	5
THE FEDERAL QUESTIONS ARE SUBSTANTIAL	7
CONCLUSION	9
APPENDIX "A" Acknowledgment of Service	
APPENDIX "B" Notice of Appeal	
APPENDIX "C" Certification to Court of Appeal	
APPENDIX "D" Denial of Transfer by Court of Appeal	
APPENDIX "E" Refusal of California Supreme Court to Mandate Transfer	

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
Anderson Nat. Bank v. Lueckett 321 U.S. 233, 64 S.Ct. 599, 88 L.Ed. 692	9
Douglas v. California 372 U.S. 353, 83 S.Ct. 814, 9 L.Ed.2d 811	2
Gotthilf v. Sills 375 U.S. 79, 84 S.Ct. 187, 11 L.Ed.2d 159	2
Grannis v. Ordean 234 U. 385, 34 S.Ct. 779, 58 L.Ed. 1363	8
Milliken v. Meyer 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 287	9
Panama Refining Co. v. Ryan 293 U.S. 388, 55 S.Ct. 241, 79 L.Ed. 446	8
Prudential Ins. Co. v. Cheek 259 U.S. 530, 42 S.Ct. 516, 66 L.Ed. 1044	2
Schechter Poultry Corp. v. United States 295 U.S. 495, 55 S.Ct. 837, 79 L.Ed. 1570	8
<u>Statutes</u>	
Title 28 U.S.C. § 1257(2)	2
California Water Code § 13050(d)	4
California Water Code § 13260(a)	2, 3 5
California Water Code § 13261	4, 8

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1976
No. _____

H. D. GROSS dba VALLEY
ROCK AND SAND CORPORATION,
Appellant,
vs.
PEOPLE OF THE STATE OF
CALIFORNIA,
Appellee.

JURISDICTIONAL STATEMENT

JURISDICTION

No written opinion has been provided
to Appellant by any state court herein.

The grounds on which the jurisdiction
of this Court is involved are that the
validity of a state statute has been
drawn in question.

The nature of the proceeding below is
a criminal action and the statute pursuant

to which it was brought is California Water Code, Division 7, § 13260(a).

The Judgment sought to be reviewed is dated February 4, 1977. The case was certified for transfer to the Court of Appeal on February 8, 1977 by the Superior Court Appellate Department. The Court of Appeal denied a transfer of the case to itself on February 14, 1977. The California Supreme Court refused to order the Court of Appeal to accept transfer of the case on March 24, 1977.

The jurisdiction of this Court is invoked under § 1257(2) of Title 28 of the United States Code.

The cases which sustain jurisdiction are Gotthilf v. Sills (1963) 375 U.S. 79, 79-80, 84 S.Ct. 187, 11 L.Ed.2d 159; Prudential Ins. Co. v. Cheek (1922) 259 U.S. 530, 533-34, 42 S.Ct. 516, 66 L.Ed. 1044; Douglas v. California (1963) 372 U.S. 353, 354 fn 1, 83 S.Ct. 814, 9 L.Ed. 2d 811.

The statutory Provisions complained of are found in the California Water Code, as follows:

Water Code Section 13260 (a).

"Any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the State, other than into a community sewer system, and any person who is a citizen, domiciliary, or political agency or entity of this State discharging waste outside the boundaries of the State in a manner that could affect the quality of the waters of the State within any region, shall file with the Regional Board of that region, a report of the discharge, containing such information as may be required by the Board. No report need be filed when such requirement is waived pursuant to Section 13269.

(b) Every such person discharging waste shall file with the regional board of that region a report of any material change or proposed change in the character, location, or volume of the discharge.

(c) Each report under this section shall be sworn to or submitted under penalty of perjury.

(d) Each report under this section shall be accompanied by filing fee of not to exceed one thousand (\$1000) according to a reasonable fee schedule established by the state board.

(e) When a report filed by any person pursuant to this section is

not adequate in the judgment of the regional board, the board may require such person to supply such additional information as it deems necessary."

Water Code Section 13050 (d).

"'Waste' includes sewage and any and all other waste substances, liquid, solid, gaseous or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation of whatever nature, including such waste placed within containers of whatever nature prior to, and for purposes of, disposal."

Water Code Section 13261.

"Any person failing to furnish a report under Section 13260 when so requested by a regional board is guilty of a misdemeanor."

No state court has furnished Appellant with a written opinion. The Notice of Appeal herein is included in Appendix "B" hereto.

QUESTIONS PRESENTED

Questions presented by this appeal are whether the Water Code section under which Appellant was convicted violates the Constitution of the United States

by establishing a void delegation of judicial power to an administrative agency, and by delegating unbridled discretion to an administrative agency to determine its own jurisdiction; and is void for failure to provide timely and adequate notice of a determination that a person is subject to its provisions, or to provide for notice of any other determinations; and is void for failure to provide a hearing to persons not in agreement with decisions of the agency; and because the statutory section is uncertain, indefinite, overbroad, vague, and subject to arbitrary interpretation.

STATEMENT OF CASE

Appellant is the owner and operator of a rock and sand production plant. Sand is mined on the premises and is washed and placed in piles for sale to the general public. The water used to wash the sand is conducted to ponds on the premises for re-use.

Appellant was charged with a violation of Division 7 § 13260 (a) of the California Water Code, a misdemeanor, in that he

failed to pay a filing fee of not to exceed \$1,000.00 to the California Regional Water Quality Control Board.

The state agency maintained that Appellant was in fact discharging "waste" as defined in the statute and therefor must file a report and pay a filing fee. The instant misdemeanor action followed Appellant's refusal to pay any filing fee.

A pre-trial motion to dismiss was brought on the ground that the statutory provisions are in violation of the United States Constitution by reason of being vague, uncertain and overbroad. The motion was denied and appellant thereafter was convicted in a jury trial. Execution of sentence was stayed pending appeal.

On appeal to the Appellate Department of the Superior Court, Appellant maintained that the said statutory provisions were invalid for the same reasons as in the questions presented in this appeal. The Appellate Department affirmed the Judgment on February 4, 1977, but certified the case to the Court of Appeal as necessary to settle an important question

of law. The certification order is included in Appendix "C" hereto.

The Court of Appeal refused to exercise its discretion to transfer the appeal, and the denial of transfer is included in Appendix "D" hereto. The California Supreme Court denied Appellant's petition for Writ of Mandate to command the Court of Appeal to so transfer the case. The denial by the Supreme Court is included in Appendix "E" hereto.

THE FEDERAL QUESTIONS ARE SUBSTANTIAL

This law confers upon an administrative agency the right arbitrarily to determine the adjudicative fact of whether or not a particular person is "discharging waste". Once this factual determination is made, such person becomes subject to the provisions, including criminal penalties, of the act.

The statutory scheme does not present any effective opportunity to a person to confront witnesses who maintain that there is a waste discharge nor to present evidence and arguments that there is in fact no waste discharge and to thus

challenge the jurisdiction of the agency.

The uncontrolled discretion thus granted to the administrative agency to determine who is in fact subject to its jurisdiction, and the failure of the statutory scheme to set forth sufficiently definite standards regarding its jurisdiction render the statute void. Schechter Poultry Corp. v. United States, 295 U.S. 495, 55 S.Ct. 837, 848, 79 L.Ed. 1570; Panama Refining Co. v. Ryan, 293 U.S. 388, 55 S.Ct. 241, 79 L.Ed. 466.

Water Code § 13261 provides that it is a misdemeanor to fail to furnish a report "when so requested by a regional board."

The statute does not state whether or not the "request" by the regional board must be in writing, or whether such "request" may be oral, nor does the statute declare what form the "request" must take, nor whether notice of the "request" shall be furnished to a person by personal service, posting, or by mail. Such insufficient notice procedures do not afford due process of law. Grannis v. Ordean, 234 U.S. 385, 34 S.Ct. 779, 58

L.Ed. 278; Anderson Nat. Bank v. Lockett, 321 U.S. 233, 64 S.Ct. 599, 606, 88 L.Ed. 692; Milliken v. Meyer, 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 278.

A substantial federal question is also presented by reason of the fact that the statutory provisions are so vague and uncertain that men of common intelligence must guess at their meaning and because the provisions are overbroad.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that probable jurisdiction should be noted.

Respectfully submitted,
PETER AMSCHER
Counsel for Appellant

APPENDIX "A"

IN THE MUNICIPAL COURT OF RIVERSIDE
COUNTY, MT. SAN JACINTO JUDICIAL DISTRICT

H. D. GROSS, dba VALLEY	)	ACKNOWLEDG-
ROCK AND SAND CORPORATION,	)	MENT OF SER-
Defendant	)	VICE OF
and Appellant	)	NOTICE OF
vs.	)	APPEAL AND
PEOPLE OF THE STATE	)	OF JURIS-
OF CALIFORNIA,	)	DICTIONAL
	)	STATEMENT
Plaintiff)	
and Appellee.)	

I, LEONARD MANDEL, state:

1. That I am a deputy district attorney for the County of Riverside and an attorney of record for the People of the State of California herein.

2. That I acknowledge receipt of service of a copy of the Notice of Appeal to the United States Supreme Court; and of a copy of the Jurisdictional Statement herein.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on June 7, 1977, at Hemet, California.

/s/ Leonard Mandel
LEONARD MANDEL

APPENDIX "A"

APPENDIX "B"

IN THE MUNICIPAL COURT OF RIVERSIDE
COUNTY, MT. SAN JACINTO JUDICIAL DISTRICT

H. D. GROSS, dba VALLEY	)	FILED
ROCK AND SAND CORPORATION,	)	1977 JUN-6 PM
	)	4:41
Defendant	)	MUNICIPAL
vs. and Appellant	)	COURT
	)	HEMET-SAN
PEOPLE OF THE STATE	)	JACINTO
OF CALIFORNIA,	)	JUDICIAL
Plaintiff	)	DISTRICT
and Appellee.)	

NOTICE OF APPEAL TO THE SUPREME COURT OF
THE UNITED STATES

NOTICE IS HEREBY GIVEN that H.D. Gross
dba VALLEY ROCK AND SAND CORPORATION,
Defendant and Appellant herein, hereby
appeals to the Supreme Court of the
United States from the final Judgment of
this Court entered on November 22, 1977,
a hearing on which was denied by the Cali-
fornia Supreme Court on March 24, 1977.

This appeal is taken pursuant to Sec-
tion 1257 (a) of Title 28 of the United
States Code.

Dated: June 6, 1977

AMSHEL LAW CORPORATION
By Peter Amschel
Peter Amschel, Attorney
for Defendant & Appellant

APPENDIX "B"

APPENDIX "C"

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF RIVERSIDE

Title:

PEOPLE OF THE STATE vs H.D. GROSS, dba
OF CALIFORNIA, VALLEY SAND &
ROCK

Date & Dept. Number

2-8-77 APP. A-594

Counsel:

Reporter:

District Amschel Law Corp. None
Attorney

Proceeding:

CERTIFICATION TO COURT OF APPEAL

Application for Certification to Court of
Appeal having been read and considered,
same is granted and the entire above
referenced matter is hereby certified to
the District Court of Appeal, Fourth
Appellate District, Division II, pursuant
to the provisions of Rule 63 of the
CALIFORNIA RULES OF COURT.

/ R/A CAL. 2 ATTY(S). SCHULTE, Judge
Stratton, Clerk

MINUTES OF SUPERIOR COURT

APPENDIX "C"

APPENDIX "D"

COURT OF APPEAL - STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT

Court of Appeal - Fourth Dist.

FILED

FEB 14 1977

ERVIN J. TUSZYNSKI, Clerk

PEOPLE, ETC.) 4 Crim. NO 9302
Respondent)
vs.) COUNTY NO A-594
H.D. GROSS dba VALLEY)
SAND & ROCK)
Appellant)

BY THE COURT:

A transfer of the appeal in the above
entitled case to this court on certifica-
tion by the Appellate Department of the
Superior Court of the State of California
in and for the County of Riverside is
DENIED.

Gardner, P.J.

Copies to:

County Clerk, Riverside
Atty. Gen., San Diego
Dist. Atty., Riverside
Amschel Law Corp.,
120 S. Harvard St., Hemet, 92343

APPENDIX "D"

APPENDIX "E"

ORDER DENYING ALTERNATIVE WRIT

L.A.

No. 30748

IN THE
SUPREME COURT OF THE STATE OF CALIFORNIA
IN BANK

GROSS, etc., Petitioner,

v.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT
DIVISION TWO, RESPONDENT:

PEOPLE, Real Party in Interest.

Petition for writ of Mandate DENIED

SUPREME COURT

FILED

MAR 24 1977

G. E. Bishel, Clerk

Tobriner

Acting Chief Justice

APPENDIX "E"

C O P Y

Supreme Court, U. S.
FILED

SEP 19 1977

MICHAEL BOGAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

NO. 76-1828

H. D. GROSS dba VALLEY
ROCK AND SAND CORPORATION

Appellant,

vs.

PEOPLE OF THE STATE OF
CALIFORNIA,

Appellee.

On Appeal From the Appellate
Department, Superior Court
of California, County of
Riverside

MOTION OF APPELLEE
TO DISMISS APPEAL

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COUNTY OF RIVERSIDE
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(714) 787-2355

Counsel for Appellee

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

NO. 76-1828

H. D. GROSS dba VALLEY
ROCK AND SAND CORPORATION,

Appellant,

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SUBJECT INDEX

	<u>Page</u>
TABLE OF AUTHORITIES	ii
THE STATE STATUTE INVOLVED AND THE NATURE OF THE CASE	1-5
THE PROCEEDINGS BELOW	6-8
THE CASE PRESENTS NO SUBSTANTIAL QUESTION NOT PREVIOUSLY DECIDED BY THIS COURT	8-22
CONCLUSION	23

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
Morshead v. California Regional Water Quality Control Board 45 Cal.App.3d 442 (1975)	5, 15
National Cable Television v. United States 415 U.S. 336 39 L.Ed.2d 370 94 S.Ct. 1146 (1974)	9
Panama Refining Co. v. Ryan 293 U.S. 388 55 S.Ct. 241 79 L.Ed. 466 (1935)	9
People ex. rel. Evelle J. Younger v. F.E. Crites, Inc. 51 Cal.App.3d 961 (1975)	5
Schecter Poultry Corp. v. United States 295 U.S. 495 55 S.Ct. 837 79 L.Ed. 1570 (1935)	9, 10
<u>Statutes</u>	
California Water Code § 13050(d)	4
California Water Code § 13260(a)	2 - 4
California Water Code § 13261	4, 7
California Water Code § 13263	12 -15
California Water Code § 13265	11
California Water Code § 13320	16 -19
California Water Code § 13330	19,20 -21
Title 23, § 2200, California Administrative Code	22

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1976

No. 76-1828

H. D. GROSS dba VALLEY
ROCK AND SAND CORPORATION,

Appellant,

vs.

PEOPLE OF THE STATE OF
CALIFORNIA,

Appellee.

MOTION OF APPELLEE TO DISMISS APPEAL

Appellee moves that the appeal
herein taken be dismissed on the ground
that said appeal does not present a
substantial federal question.

I

THE STATE STATUTE INVOLVED
AND THE NATURE OF THE CASE

A

THE STATUTE

This appeal raises the validity of
certain provisions of the California

Water Code, as follows:

Water Code Section 13260.

- (a) "Any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the state other than into a community sewer system, and any person who is a citizen, domiciliary, or political agency or entity of this state discharging waste or proposing to discharge waste outside the boundaries of the state in a manner that could affect the quality of the waters of the state within any region, shall file with the regional board of that region a report of that discharge, containing such information as may be required by the board. No report need be filed when such

requirement is waived pursuant to Section 13269.

- (b) Every such person discharging waste shall file with the regional board of that region a report of any material change or proposed change or proposed change in the character, location, or volume of the discharge.
- (c) Each report under this section shall be sworn to or submitted under penalty of perjury.
- (d) Each report under this section shall be accompanied by a filing fee of not to exceed One Thousand Dollars (\$1,000) according to a reasonable fee schedule established by the state board.
- (e) When a report filed by any person pursuant to this section is not adequate in the judgment of

the regional board, the board may require such person to supply such additional information as it deems necessary."

Water Code Section 13050.

- (d) "'Waste' includes sewage and any and all other waste substances, liquid, solid, gaseous or radio-active, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation of whatever nature, including such waste placed within containers of whatever nature prior to, and for purposes of, disposal."

Water Code Section 13261.

"Any person failing to furnish a report under Section 13260 when so requested by a

regional board is guilty of a misdemeanor."

These sections are a part of the Porter-Cologne Water Quality Control Act (Water Code sections 13020 through 13983 inclusive) which establishes water quality control boards and each regional board being the principle state agency with prior responsibility for the coordination and control of water quality. See People ex rel. Evelle J. Younger v. F. E. Crites, Inc., 51 Cal.App.3d 961, 963 (1975) and Morshead v. California Regional Water, 45 Cal.App.3d 442 (1975) footnote 2, involving injunctive relief rather than criminal prosecution for violations of the Porter-Cologne Water Quality Control Act. No published appellate decision has been found which passes upon the constitutionality of the instant section 13260(a) of the California Water Code, a misdemeanor.

THE PROCEEDINGS BELOW

Appellant was charged by a written complaint in the Municipal Court with a violation of Section 13260(a) of the California Water Code, a misdemeanor, in that he did wilfully and unlawfully fail to properly file a report of waste discharge, at the request of the California Regional Water Quality Control Board and in that he did wilfully and unlawfully violate section 13260(d) of the California Water Code by failing to accompany with the report a filing fee of not to exceed One Thousand Dollars (\$1,000).

Prior to the commencement of criminal proceedings, the Regional Water Quality Control Board informed appellant by letter, which letter was in fact received by appellant, that his operation constituted a waste

discharge and if the report of waste discharge was not submitted within seventeen days from the date of the letter, criminal proceedings would be instituted.

Appellant filed a demurrer to the aforementioned complaint pursuant to California Penal Code section 1004(4) alleging, inter alia, "Section 13261 of the California Water Code violates the due process clause of the 14th Amendment to the United States Constitution in that it fails to define the crime which the defendant is accused of committing with sufficient certainty, and as such does not state a public offense, and is therefore void and unenforceable, and subject to demurrer." Said demurrer was overruled by the Municipal Court.

Appellant was convicted in a jury trial of the charge. Upon appeal, the Appellate Department of the Superior

Court of the State of California, County of Riverside, affirmed the judgment of conviction and pursuant to Rule 63 of the California Rules of Court certified the matter to the District Court of Appeal, Fourth Appellate District, Division Two. The District Court of Appeal denied the transfer of appeal from the Appellate Department of the Superior Court. A petition for a Writ of Mandate filed in the Supreme Court of the State of California to compel the District Court of Appeal to transfer the appeal from the Appellate Department of the Superior Court was denied.

II

ARGUMENT

THE CASE PRESENTS NO SUBSTANTIAL
QUESTION NOT PREVIOUSLY DECIDED
BY THIS COURT

Appellant alleges, the instant Water Code section "violates the Constitution of the United States" on six different grounds. Each of these will be separately

discussed.

A

THE SECTION DOES NOT ESTABLISH A
VOID DELEGATION OF JUDICIAL POWER
TO AN ADMINISTRATIVE AGENCY

Since the decisions of Schecter Poultry Corp. v. United States, 295 U.S. 495, 55 S.Ct. 837, 79 L.Ed. 1570 and Panama Refining Co. v. Ryan (1935) 293 U.S. 388, 55 S.Ct. 241, 79 L.Ed. 466, this Court has rarely invalidated a statute based upon a void delegation of judicial power to an administrative agency.

As Justices Marshall and Brennan pointed out in their dissents in National Cable Television v. United States, 415 U.S. 336, 353-354, 39 L.Ed.2d 370, 94 S.Ct. 1146 (1974):

"The notion that the Constitution narrowly confines the power of Congress to delegate authority to administrative agencies, which was briefly in vogue in the 1930's, has been virtually abandoned by the

court for all practical purposes. It is hardly surprising that, until today's decision, the court had not relied upon Schechter Poultry Corp. v. United States, 295 U.S. 495, 79 L.Ed. 1570, 55 S.Ct. 837 (1935), almost since the day it was decided."

Here California Water Code Section 13260 lays out specific guidelines for the regional board to follow. 'Waste' is clearly defined in California Water Code Section 13050(d).

In conclusion, there has been no showing of a void delegation of judicial power to the Regional Water Quality Control Boards.

B

THE SECTION DOES NOT DELEGATE
UNBRIDLED DISCRETION TO AN
ADMINISTRATIVE AGENCY TO
DETERMINE ITS OWN JURISDICTION

As indicated in the prior discussion

the Porter-Cologne Water Quality Control Act (Water Code Sections 13020 through 13983 inclusive) establishes the Water Quality Control Boards in the State of California. Section 13260(a) of the Water Code clearly indicates under what circumstances reports must be filed with the regional board. The jurisdiction is thus defined by the statutes, not determined by the regional board.

C

THE SECTION IS NOT VOID FOR
FAILURE TO PROVIDE TIMELY
AND ADEQUATE NOTICE OF A
DETERMINATION THAT A PERSON
IS SUBJECT TO ITS PROVISIONS

Water Code Section 13261 makes the failure to furnish a report when so requested by a regional board a misdemeanor.

California Water Code Section 13265 provides: "Any person discharging waste in violation of Section 13264, after such

violation has been called to his attention in writing by the Regional Board, is guilty of a misdemeanor. Each day of such discharge shall constitute a separate offense."

California Water Code Section 13263 provides:

- (a) The regional board, after any necessary hearing, shall prescribe requirements as to the nature of any proposed discharge, existing discharge, or material change therein, except discharges into a community sewer system, with relation to the conditions existing from time to time in the disposal area or receiving waters upon or into which the discharge is made or proposed. The requirements shall implement relevant water quality control plans,

if any have been adopted, and shall take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of Section 13241.

- (b) A regional board, in prescribing requirements, need not authorize the utilization of the full waste assimilation capacities of the receiving waters.
- (c) The requirements may contain a time schedule, subject to revision in the discretion of the board.
- (d) The board may prescribe requirements although no discharge report has been filed.

- (e) Upon application by any affected person or on its own motion, the regional board may review and revise requirements. All requirements shall be reviewed periodically.
- (f) The regional board shall notify in writing the person making or proposing the discharge or the change therein of the discharge requirements to be met. After receipt of such notice, the person so notified shall provide adequate means to meet such requirements.
- (g) No discharge of waste into the waters of the state, whether or not such discharge is made pursuant to waste discharge requirements, shall create a vested right to continue such discharge. All discharges of waste

into waters of the state
are privileges, not rights.

Thus the notice requirement is that the regional board must notify the dischargers of waste in writing. This was precisely what occurred in this case. The written requirement would clearly notify persons involved. See Morshead v. California Regional Water Quality Control Board, 45 Cal.App.3d 442 (1975) where written notices sent to interested parties by the water board were found to be proper.

D

THE SECTION IS NOT VOID FOR
FAILURE TO PROVIDE FOR NOTICE
OF ANY OTHER DETERMINATIONS

Appellant does not clearly specify what "Other Determinations" are meant. Thus, Appellee cannot respond to this point inasmuch as it is not clear what alleged defects are challenged.

E

THE SECTION IS NOT VOID FOR
FAILURE TO PROVIDE A HEARING
TO PERSONS NOT IN AGREEMENT
WITH DECISIONS OF THE AGENCY

California Water Code Section 13320
permits an aggrieved person to petition
the state board to review their action
and present relevant evidence on the
matter:

- (a) Within 30 days of any action
or failure to act by a regional
board under subdivision (c) of
§ 13225, Article 4 (commencing
with § 13260) of Chapter 4 of
this division, Chapter 5 (com-
mencing with § 13300) of this
division, Chapter 5.5 (commenc-
ing with § 13370) of this divi-
sion, Chapter 7 (commencing
with § 13500) of this division,
or Division 7.5 (commencing
with § 14000), any aggrieved
person may petition the state

board to review such action or
failure to act. In case of
failure to act, the 30-day
period shall commence upon
refusal of the board to act, or
60 days after request has been
made to the board to act. The
state board may, on its own mo-
tion, at any time review such
action or failure to act and
also any failure to act under
Article 3 (commencing with
Section 13240) of Chapter 4
of this division.

- (b) The evidence before the state
board shall consist of (i) the
record before the regional
board, and (ii) any other
relevant evidence which, in
the judgment of the state board,
should be considered to effec-
tuate and implement the policies
of this division.

- (c) The state board may find the regional board action or inaction to be appropriate and proper. Upon finding that the action of the regional board, or the failure of the regional board to act, was inappropriate or improper, the state board may: (1) direct that the appropriate action be taken by the regional board, (2) refer the matter to any other state agency having jurisdiction, (3) take the appropriate action itself, or (4) any combination of the foregoing. In taking any such action, the state board is vested with all the powers of the regional boards under this division.
- (d) In the event a waste discharge in one region affects the

waters in another region and there is any disagreement between the regional boards involved as to the requirements which should be established, either regional board may submit the disagreement to the state board which shall determine the applicable requirements.

California Water Code Section 13330 allows an aggrieved person to file a petition for a writ of mandate in the Superior Court to review the decision of the administrative agency.

Section (a) of California Water Code Section 13330 states that "the failure to file such an action shall not preclude a person from challenging the validity of the decision in any judicial proceedings brought to enforce such an order".

Thus an aggrieved person may use

either a writ of mandate or challenge in a criminal proceeding the validity of the decision of the water board or use both methods. This two-fold route to review the board's determination provides an adequate method to persons who disagree with the decisions of the board.

- California Water Code Section 13330 states:

- (a) "Within 30 days after service of a copy of a decision and order issued by the state board under Section 13320, any aggrieved party may file with the superior court a petition for a writ of mandate for review thereof. Failure to file such an action shall not preclude a party from challenging the reasonableness and validity of a decision or order of a regional board or the state board in any judicial

proceedings brought to enforce such decision or order or for other civil remedies.

- (b) The evidence before the court shall consist of the record before the state board, including the regional board's record, and any other relevant evidence which, in the judgment of the court, should be considered to effectuate and implement the policies of this division. In every such case, the court shall exercise its independent judgment on the evidence.
- (c) Except as otherwise provided herein, the provisions of subdivisions (e) and (f) of Section 1094.5 of the Code of Civil Procedure shall govern proceedings pursuant to this section."

F

THE STATUTORY SECTION IS NOT
UNCERTAIN, INDEFINITE, OVER-
BROAD, VAGUE AND SUBJECT TO
ARBITRARY INTERPRETATION.

Appellant does not specify in particular these alleged defects in the statutory section. 'Waste' is clearly defined in California Water Code Section 13050(d). California Water Code Section 13260 (a) - (e) clearly defines 'discharging or proposing to discharge waste' and the reporting requirements. The conduct proscribed is clear to a person of common intelligence. The fee schedule in Section 13260(d) of the California Water Code is found in Title 23, Section 2200 of the California Administrative Code. The statutory section therefore does not suffer from any of the defects alleged.

III

CONCLUSION

Wherefore, Appellee respectfully submits that the questions upon which this cause depends are so unsubstantial as not to need further argument, and Appellee respectfully moves the court to dismiss this appeal, or, in the alternative, to affirm the judgment entered in the case by the Appellate Department of the Superior Court of the State of California, County of Riverside.

Respectfully submitted,

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Counsel for Appellee